

Message Text

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R 022246Z MAY 78
FM SECSTATE WASHDC
TO AMEMBASSY SINGAPORE

C O N F I D E N T I A L STATE 112040

STADIS//////////

E.O. 11652: GDS

TAGS: EINV, SN

SUBJECT: INVESTMENT TREATY

REF: SINGAPORE 1717

1. WORK ON MODEL INVESTMENT TREATY HAS BEEN INTENSIVE DURING PAST TWO-THREE MONTHS AND NOW APPEARS TO BE NEARING COMPLETION. IN VIEW OF PROGRESS, WE ARE ADVISING SINGAPORE EMBASSY INFORMALLY THAT MODEL TREATY SHOULD BE READY TO SUBMIT TO GOS WITHIN SIX WEEKS. PRESENT STATUS IS THAT A REVISED DRAFT HAS BEEN PREPARED WITH TWO OR THREE BRACKETED PASSAGES BEARING ON NATIONAL TREATMENT VS MFN AND STANDARDS OF COMPENSATION ISSUES FOR DECISIONS BY UNDER SECRETARY COOPER. OUR TARGET IS TO OBTAIN THE APPROVALS AS WELL AS RESOLUTION OF A FEW DRAFTING POINTS STILL UNSETTLED BETWEEN
CONFIDENTIAL

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PAGE 02 STATE 112040

STATE AND TREASURY IN TIME TO GET INTERAGENCY CLEARANCE AT MEETING SCHEDULED FOR MAY 15. DEPARTMENT WILL CONSULT PRIVATE SECTOR INFORMALLY THROUGH MECHANISM OF DISCUSSION WITH ADVISORY COMMITTEE ON MNES MAY 4; WE PLAN TO COVER MAIN PROVISIONS OF MODEL TREATY ORALLY AND NOT DISTRIBUTE TEXT BEFORE SUBMISSION TO GOS. ASSUMING MAY 15 MEETING IS CONCLUSIVE, WE WILL SEND MODEL TREATY TEXT TO EMBASSY FOR

COMMENT REGARDING SUITABILITY FOR NEGOTIATION WITH SINGAPORE. AT SAME TIME, DEPT. WILL UNDERTAKE CONGRESSIONAL CONSULTATIONS, WHICH CAN PROBABLY BE DONE QUICKLY, AND PREPARE CIRCULAR 175 MEMO TO AUTHORIZE NEGOTIATION WITH GOS OF TREATY BASED ON MODEL.

2. THERE PROBABLY WILL NOT BE MUCH FLEXIBILITY TO ALTER THE SUBSTANTIVE PROVISIONS OF PROPOSED TREATY THROUGH BILATERAL NEGOTIATIONS, ALTHOUGH IT MAY BE POSSIBLE TO MODIFY WORDING OF SPECIFIC PORTIONS TO ACCOMMODATE WISHES OF NEGOTIATING PARTNER. THE CURRENT INTENT IS TO OFFER THE MODEL TREATY TO INTERESTED LDCS ON A TAKE IT OR LEAVE IT BASIS. EVERYONE INVOLVED ASSUMES THAT SINGAPORE IS ONE OF THE COUNTRIES MOST LIKELY TO BE INTERESTED IN SUCH A TREATY. THEREFORE, WE ENCOURAGE YOU, WHEN IT IS READY, TO EXAMINE THE TREATY QUICKLY AND CAREFULLY FOR LIKELY GOS REACTIONS.

3. REGARDING PARA 2A, EA UNDERSTANDING IS THAT MFN TREATMENT ON ENTRY (OR BETTER SAID, NON-DISCRIMINATION ON ENTRY AMONG FOREIGN INVESTORS) IS A WELL-ESTABLISHED CONCEPT IN INTERNATIONAL LAW, ALTHOUGH NOT HERTOFORE WHAT THE US HAS SOUGHT. WE WILL ASK L TO PROVIDE SOME EXPLANATORY MATERIAL FOR YOUR USE ON THE LEGAL IMPLICATIONS OF THE FORMULATION THAT EMERGES IN THE TREATY. NON-DISCRIMINATION DOES NOT REFER TO CHOICE AMONG
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PAGE 03 STATE 112040

COMPETITIVE PROPOSALS FOR A GIVEN INVESTMENT PROJECT. RATHER, IT IS A GENERAL PROHIBITION AGAINST SELECTIVE UNILATERAL CONDITIONS OR LIMITATIONS IMPOSED UPON FOREIGN INVESTORS BY NATIONALITY, SUCH AS IN THE AREAS OF FOREIGN/DOMESTIC PROPORTIONS OF OWNERSHIP, ACCESS TO LOCAL CAPITAL MARKETS, ACCESS TO LOCAL FOREIGN EXCHANGE MARKETS, REPATRIATION OF PROFITS, ETC. UNDER SUCH A TREATY PROVISION THE HOST GOVERNMENT COULD RETAIN LEEWAY TO IMPOSE CONDITIONS UPON ALL FOREIGN INVESTORS AS A GROUP NOT REQUIRED OF NATIONAL INVESTORS AND COULD DIFFERENTIATE ON THE BASIS OF ECONOMIC SECTORS, E.G. BY LEVYING SPECIAL REQUIREMENTS ON PETROLEUM INDUSTRY INVESTORS. SUCH A TREATY OBLIGATION WOULD NOT SUPPLANT THE RIGHT OF INDIVIDUAL INVESTORS TO REACH MUTUAL AGREEMENT WITH THE HOST GOVERNMENT ON THE TERMS OF GIVEN INVESTMENT PROJECTS. THUS THE DIFFICULTY ENVISIONED IN PARA 2A OF REFTEL SHOULD NOT ARISE.

4. EMBASSY'S POINT IN PARA 2B OF REFTEL IS WELL TAKEN. WE WILL DO WHAT WE CAN TO AVOID UNNECESSARY IRRITANTS IN NEGOTIATING INSTRUCTIONS. VANCE

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